of the defendant was limited to one hundred dollars. The defendant had filed and published a schedule of rates and tariffs in compliance with the provisions of the Interstate Commerce Act and the orders of the Interstate Commerce Commission. A part of this schedule provided that "one hundred pounds of personal baggage, not exceeding one hundred dollars in value, will be checked free for each passenger on presentation of a full ticket;" a higher rate was provided for excess value declared. This schedule was posted conspicuously near the defendant's ticket office in question; but the plaintiff neither knew of nor consented to the limitation of liability. The court held the defendant liable for the full amount of damages claimed. *Hooker* v. *Boston & M. R. R.* (Mass. 1911), 95 N. E. 945.

At common law a common carrier may make just and reasonable stipulations in good faith as to the value of the property intrusted to its care, and the amount for which it shall respond in case of loss; but, in order to be effective, such stipulation must be brought home to the knowledge of the shipper through either a formal contract, or an express or inferable notice under circumstances warranting the assumption of actual consent. ELLIOTT, RAILROADS, Ed. 4, § 1510, and cases cited. This rule applies in all states except in Iowa, Kansas, Texas, Nebraska and Kentucky, where it has been abrogated by statute or constitution. 1 HUTCH., CARRIERS, Ed. 3, § 405, and cases cited. A shipper must know of and consent to such stipulations before he can be bound by them. 4 ELLIOTT, RAILROADS, Ed. 2, § 1501, and cases cited. *Contra*: *Gardiner* v. *New York Central & H. R. Co.*, 123 N. Y. Supp. 865. However, in the principal case, which involved interstate transportation, the defendant contended that the common law rule was abrogated by the federal interstate commerce act. One of the effects of this act is to bind the public inexorably to the rate published, regardless of knowledge, assent or even misrepresentation. *Gulf, Colorado & Santa Fe Ry.* v. *Hefley*, 158 U. S. 98, 39 L. Ed. 910; *Texas & Pacific Ry.* v. *Mugg*, 202 U. S. 242, 50 L. Ed. 1011; *Melody* v. *Great Northern Ry.* (S. D.) 127 N. W. 543, 30 L. R. A. (N. S.) 568. The pivotal question, then, in the principal case was whether the limitation as to the liability for loss is a part of the passenger rate or tariff, or whether it was a subsidiary incident to the main matter of fare. The court held that the limitation was not an essential element in the fare for transportation of passengers. "The carrier cannot make something a rate merely by calling it that name. It cannot convert that which is in its essence a subject for regulation according to the laws of the several States, into the rigidity of a rate protected by the Federal laws, simply by putting it into a schedule of rates and tariffs."

COMMERCE—CONSTITUTIONALITY OF STATE REGULATION OF RATES.—The Board of Railroad Commissioners of the State of Arkansas prescribed a schedule of rates which should govern both freight and passenger business on intrastate hauls by all railroads, whether domestic or foreign, doing business within the State. The complainant railroads sought to enjoin the enforcement of the tariffs on the ground that the tariffs were a burden on interstate commerce and were therefore violative of the commerce clause of the Constitution of the United States. *Held,* that the tariffs were not void on this

ground, because, while rates established by a State for intrastate hauls necessarily affect interstate rates indirectly, yet the extent of the burden is a matter of fact and does not *necessarily* render such rates unconstitutional as an interference with interstate commerce. *In re Arkansas Rate Cases* (C. C. E. D. Ark., 1911), 187 Fed. 29.

The State, in regulating rates, exercises "nothing more or less than the powers of government inherent in every sovereignty," the police power. *License Cases*, 5 How. 583, 12 L. Ed. 256. But this police power of a State "cannot obstruct * * * interstate commerce beyond the necessity of its exercise." *Railroad Co.* v. *Husen*, 95 U. S. 465, 473. The State may exercise such power to regulate the rates of corporations engaged in the management of public utilities. *Munn* v. *Illinois*, 94 U. S. 113, 24 L. Ed. 77. Such a regulation of local rates "does not interfere with interstate commerce 'as a matter of law,' yet it may do so as a matter of fact." *Shepard* v. *Northern Pacific Ry. Co.*, 184 Fed. 765, 797 (which is differentiated in the principal case, page 302). The court makes a distinction between *affecting* and *interfering with* interstate commerce, as a matter of fact. It admits that State rates like those in this case, *affect* interstate rates in practically every case, but do not necessarily interfere. "It is the effect * * * that determines whether or not they so substantially burden interstate commerce that they violate the commerce clause of the Constitution." *Shepard* v. *Northern Pacific Ry. Co., supra.* This doctrine seems rather difficult of application. It throws upon the court the burden of determining whether a law comes within one class or another; the court practically must decide whether a State ought to pass such laws rather than whether it has power to pass them. It throws upon the court a function which is legislative rather than judicial. The Supreme Court has declared that every combination in restraint of trade is within the Sherman Act if, from the court's view, the restraint is unreasonable on the facts of the case. On the basis of the principal case, the same reasoning would either uphold or condemn a State statute which indirectly affects interstate commerce, according as it seems reasonable or not to the court under the facts of each case. This would seem to follow from the *Shepard* case (*supra*), where it is said that the question of whether the commerce clause is violated is "a judicial question which each court must determine upon its own responsibility on the special facts of each case." *Shepard* v. *Pacific Ry. Co.*, 184 Fed. 765, at p. 773. For a discussion of the *Shepard* case, see 9 MICH. L. REV. 702.

COMMERCE—NATURAL GAS AS SUBJECT OF INTERSTATE COMMERCE.—Laws of Oklahoma, 1907, Chapter 67, provided that the laying, maintaining, etc., of pipe lines shall be an additional burden on highways only to be exercised by express charter grant; that no domestic corporation shall be granted the right of eminent domain unless its charter stipulations negative all right to transport gas out of the State or to connect with or deliver to any other source transporting or furnishing gas outside the State; and that foreign corporations be denied a license to do business in Oklahoma if formed for the purpose of or engaged in the business of transporting natural gas by means of pipe lines. Complainants, foreign corporations owning the rights to the prod-